

8599
No. 12338

United States
Court of Appeals
For the Ninth Circuit.

NORTHWESTERN MUTUAL FIRE ASSOCIA-
TION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

NOV 25 1949

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

JO D. COOK, ESQ.,
1401 Joseph Vance Building,
Seattle, Washington.

For Respondent:

WILFORD H. PAYNE, ESQ.

Docket No. 16147

NORTHWESTERN MUTUAL FIRE ASSOCI-
ATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1947

- Oct. 14—Petition received and filed. Taxpayer notified. Fee paid.
- Oct. 14—Request for Circuit hearing in Seattle, Washington filed by taxpayer. 11/13/47 granted.
- Oct. 16—Copy of petition served on General Counsel.
- Nov. 20—Answer filed by General Counsel.
- Nov. 20—Request for hearing in Seattle, Washington filed by General Counsel.
- Dec. 3—Copy of answer and request served on taxpayer—Seattle, Washington.
- Dec. 11—Entry of appearance of Jo D. Cook as counsel filed.

1948

- Mar. 23—Hearing set May 17, 1948, at Seattle, Washington.
- May 17—Hearing had before Judge Black on merits. Stipulation of facts filed at hearing. Briefs due 7/5/48—replies 7/25/48.

1948

- July 6—Brief filed by taxpayer.
- July 6—Motion for extension to July 22, 1948, to file brief filed by General Counsel. 7/7/48 granted.
- July 23—Transcript of hearing of 5/17/48 filed.
- July 27—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 7/27/48 granted and served 7/28/48.
- July 28—Petitioner's brief served on General Counsel.
- Aug. 16—Motion for extension to August 31, 1948, to file reply brief filed by taxpayer. 8/17/48 granted.
- Aug. 26—Motion for leave to file reply brief, reply brief lodged, filed by General Counsel. 8/30/48 granted.
- Aug. 30—Reply brief filed by taxpayer—copy served.

1949

- Mar. 30—Opinion rendered, Black J. Decision will be entered for the respondent. 3/30/49 copy served.
- Mar. 30—Decision entered, Black J. Div. 15.
- June 24—Petition for review by U. S. Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.
- June 24—Proof of service filed.
- Aug. 3—Agreed motion to enlarge time to Sept. 2, 1949, to prepare and transmit record filed.
- Aug. 3—Order enlarging time to Sept. 22, 1949, to prepare and transmit record entered.

1949

Aug. 4—Stipulation that the record on appeal include all of the pleadings, stipulations and documents of record in the above Court (The Tax Court of the United States) filed.

The Tax Court of the United States

Docket No. 16147

NORTHWESTERN MUTUAL FIRE ASSOCI-
ATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:90D:FCH dated July 18, 1947, and petitions for a redetermination of petitioner's claims for refunds, and as a basis of his proceeding alleges as follows:

1. That petitioner is a mutual fire insurance corporation organized and operating under the laws of the State of Washington, and is duly authorized and engaged in the business of writing insurance against the perils of fire and allied lines in all states of the United States and all of the mainland Provinces

of Canada, with its principal office at 217 Pine Street, Seattle, Washington; that the returns for the periods here involved were filed with the Collector for the District of Washington, at Tacoma, Washington.

2. That the notice of deficiency with statement attached, (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on July 18, 1947.

3. That the taxes in controversy are income taxes for the calendar years 1942 and 1943 and the amounts in dispute are as follows:

a. For the year 1942 the Commissioner asserts a deficiency of \$5,089.03; whereas for said year petitioner claims a refund of \$10,183.13;

b. For the year 1943 the Commissioner asserts a deficiency of \$5,347.81; whereas for said year petitioner claims a refund of \$10,854.73.

4. That the determination of taxes set forth in the said notice of deficiency is based upon the following error:

The refusal of the respondent to allow credit under Section 131 of the Internal Revenue Code for taxes paid by the petitioner to the Dominion of Canada in lieu of income taxes.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

a. That petitioner made a timely filing of 1942

and 1943 income tax returns on Form 1120 M; that said returns were made on the accrual basis, and that in said returns foreign tax credits were claimed as follows:

(1) For the year 1942 a foreign tax credit of \$5,076.60 was claimed;

(2) For the year 1943 a foreign tax credit of \$5,339.84 was claimed.

b. That upon audit of the petitioner's tax returns for 1942 and 1943 the petitioner's tax, without deduction for foreign tax credit, was established at:

(1) \$67,163.21 for the year 1942;

(2) \$70,450.68 for the year 1943.

c. That petitioner filed timely claims for refunds of 1942 and 1943 income taxes paid; that petitioner's claims for refunds in 1942 and 1943 were made because petitioner did not claim credit on petitioner's original returns for the full amount of Canadian taxes paid by petitioner during said periods because petitioner made an error in the calculation of the limitations on the foreign tax credit; that petitioner's claims for refunds were as follows:

(1) For the year 1942 petitioner claimed an additional foreign tax credit in the amount of \$10,195.56 over and above the foreign tax credit claimed in petitioner's return; that petitioner's claim acknowledged that the gross refund claimed for 1942 should be reduced by the amount of \$12.43,

representing an adjustment not in dispute; that petitioner claimed a net refund of \$10,183.13.

(2) For the year 1943 petitioner claimed an additional foreign tax credit in the amount of \$10,-862.70 over and above the foreign tax credit claimed in petitioner's return; that petitioner's claim acknowledged that the gross refund claimed for 1943 should be reduced by the amount of \$7.97, representing an adjustment not in dispute; that petitioner claimed a net refund of \$10,854.73.

d. That during the years 1942 and 1943 petitioner, a mutual corporation, was exempt from taxation on its net income from Canadian business under the provisions of the Income War Tax Act, Revised Statutes of Canada of 1927, as amended, Chapter 97, the pertinent provisions of which are as follows:

"Section 4. Incomes not liable to tax.—The following income shall not be liable to taxation hereunder:—

* * *

"(g) Mutual corporations.—The income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the profit of any member thereof, and of life insurance companies except such amount as is credited to shareholders' account;"

e. That for the years 1942 and 1943 the petitioner paid to the Dominion of Canada the fol-

lowing taxes on the net premium income of the petitioner:

(1) For the year 1942 an amount in Canadian funds equivalent to \$15,272.16 United States funds; that said tax was based upon the net premium income of petitioner on its business in Canada; and that for said year the tax rate applicable to the petitioner was 3%;

(2) For the year 1943 an amount in Canadian funds equivalent to \$16,202.54 United States funds; that said tax was based upon the net premium income of the petitioner on its business in Canada; and that for said year the tax rate applicable to the petitioner was 3%.

f. That the petitioner paid the aforementioned taxes to the Dominion of Canada for the years 1942 and 1943 under the provisions of the Special War Revenue Act, Revised Statutes of Canada of 1927, as amended, Chapter 179, the pertinent provisions of which were as follows:

“Section 13. Definitions.—In this Part, unless the context otherwise requires

* * *

“(f) ‘Net premiums’ means, in the case of a company transacting life insurance, the gross premiums received by the company other than the consideration received for annuities, less premiums returned and less the cash value of dividends paid or credited to policyholders; and, in the case of any other company, the gross premiums received or

receivable by the company or paid or payable by the insured less the rebates and return premiums paid on the cancellation of policies: Provided that in the case of a mutual company which carries on business on the premium deposit plan and in the case of an exchange 'net premiums' means the actual net cost of the insurance to the insured during the taxation period together with interest on the excess of the premium deposit over such net cost at the average rate earned by the company on its funds during the said period;—

* * *

“Section 14. Tax on certain insurance companies upon net premiums.—

“1. Every company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance, other than an association of persons formed on the plan known as Lloyds, a mutual company not carrying on the business of life insurance, and an exchange, shall pay to the Minister a tax of two per centum upon the net premiums received by it in Canada less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter.

“2. Every association of persons formed on the plan known as Lloyds, and every mutual company not carrying on the business of life insurance and not carrying on business on the premium deposit plan, authorized under the laws of the Dominion of

Canada or of any province thereof, to transact the business of insurance, shall pay to the Minister a tax of three per centum upon the net premium received by it in Canada, less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter.

“3. Every mutual company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance and which carries on business on the premium deposit plan and every exchange so authorized shall pay to the Minister a tax of four per centum upon the net premiums received by it in Canada during the calendar year 1941 and each calendar year thereafter.”

g. That in 1942 the Dominion of Canada amended the aforementioned special War Revenue Act by the enactment of Chapter 32 of the Statutes of 1942 which changed the provisions of said law as follows:

(1) That previous to the enactment of said Chapter 32 all fire insurance companies doing business in the Dominion of Canada were required by said statute to pay to the Dominion of Canada a tax of 1% on their net premium income from their business within the Dominion of Canada;

(2) That in 1942 upon the enactment of said Chapter 32 provision was made for imposing taxes

on all fire insurance companies doing business in Canada; that the basis of said tax was the net premium income of said companies from their business within the Dominion of Canada; that the rates of said tax were as follows:

(a) For all fire insurance companies which were subject to taxation on net income under the Income War Tax Act the rate of 2% on net premium income;

(b) For all fire insurance companies which were not subject to taxation on net income under the Income War Tax Act the rates of 3% and 4% on net premium income.

h. That the petitioner is informed and believes and therefore alleges the following:

(1) That the Dominion of Canada taxes on the net premium income of the petitioner, which were levied under the Special War Revenue Act as amended by Chapter 32 of the statutes of 1942, were levied on fire insurance companies that were exempt from taxes on net income under the Canadian Income War Tax Act;

(2) That the aforementioned taxes were levied by the Dominion of Canada against said insurance companies, including the petitioner, in lieu of a tax upon the income of said insurance companies including the petitioner;

(3) That the aforementioned taxes constitute a "tax paid in lieu of a tax upon income" within the

meaning and intention of Section 131 (h) of the Internal Revenue Code.

i. That the respondent notified petitioner by the letter, IT:90D:FCH, dated July 18, 1947, and statement attached thereto that deficiencies of \$5,-089.03 and \$5,347.81 will be assessed for the years 1942 and 1943, respectively, and in the statement attached to said letter (copy of statement is attached hereto and forms a part of Exhibit A) notified the petitioner that its claims for refunds of \$10,183.13 and \$10,854.73 for the years 1942 and 1943, respectively, would be disallowed by respondent unless the issues involved in the claims for refunds were made a part of a petition to this Court.

Wherefore, the petitioner prays that this Court may hear the proceeding and find that the respondent erred in refusing to allow the petitioner foreign tax credits of \$15,272.16 for the year 1942, and \$16,-202.54 for the year 1943; that the respondent is not justified in asserting deficiencies for the years 1942 and 1943; and that the petitioner is entitled to refunds of over-payments of income taxes in the amounts of \$10,183.13 for the year 1942, and \$10,-854.73 for the year 1943.

/s/ JO D. COOK,

Counsel for Petitioner.

State of Washington,
County of King—ss.

Alexander Scott, being first duly sworn on oath,

deposes and says: That he is the Treasurer of the above-named petitioner; that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ ALEXANDER SCOTT,

Subscribed and sworn to before me this 9th day of October, 1947.

[Seal] /s/ ETHEL I. ELSBURY,
Notary Public in and for the State of Washington,
residing at Seattle.

Commission expires Oct. 25, 1951.

EXHIBIT A

Form 1279

SN-IT-7

Treasury Department
Internal Revenue Service
Seattle 1, Washington
July 18, 1947

Office of
Internal Revenue Agent in Charge
Seattle Division
305 A 1331 Third Avenue Building
IT :90D:FCH

Northwestern Mutual Fire Association
217 Pine Street
Seattle, Washington

Gentlemen:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1942, and December 31, 1943, discloses a deficiency of \$10,436.84, as shown in the statement attached.

In accordance with provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Wash-

ington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:FCH. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEORGE J. SCHOENEMAN,
Commissioner.

By /s/ L. E. HALLOWELL,
Acting Internal Revenue
Agent in Charge.

FCH:mts

Enclosures:

Statement

Form of Waiver

IT:90D:FCH

Statement

Northwestern Mutual Fire Association

217 Pine Street

Seattle 1, Washington

Tax liability for the Taxable Years Ended December 31, 1942, and December 31, 1943.

Income Tax

	Liability	Assessed	Deficiency
Year 1942	\$ 67,163.21	\$ 62,074.18	\$ 5,089.03
Year 1943	70,450.68	65,102.87	5,347.81
Total	<u>\$137,613.89</u>	<u>\$127,177.05</u>	<u>\$10,436.84</u>

In making this determination of your income tax liability, careful consideration has been given to the reports of examination dated December 20, 1945; to your protests dated February 15, 1946; to the statements made at the conferences held on May 3, 1946, February 26, 1947, and April 8, 1947; and to your your claims for refund filed on February 28, 1946.

If a petition to The Tax Court of the United States is filed against the deficiencies proposed herein, the issues set forth in your claims for refunds should be made a part of the petition to be considered by The Tax Court in any redetermination of your tax liability. If petitions are not filed, the claims for refunds will be disallowed and official notices will be issued by registered mail in accordance with Section 3772 of the Internal Revenue Code.

The foreign tax credits claimed in your income tax returns for the calendar years 1942 and 1943,

in the respective amounts of \$5,076.60 and \$5,339.84, as income taxes paid to the Dominion of Canada, have been disallowed for the reason that the stated taxes do not constitute "income, war profits or excess profits taxes paid in lieu of a tax upon income, war profits, or excess profits otherwise generally imposed" by Canada. The evidence indicates that the taxes in question were in the nature of an excise imposed under the Special War Revenue Act of Canada and therefore do not meet the requirements of section 131 of the Internal Revenue Code in respect to allowable credits.

For the stated reasons it has been determined also that your claims for refund in the respective amounts of \$10,183.13 and \$10,854.73 should be disallowed for the years 1942 and 1943. The claims for refund are disallowed on the additional ground that a proper application of the provisions of section 131 of the Internal Revenue Code negatives the use of investment income as the basis for computing the limitation factor provided for under subsection (b) thereof, in the case of a mutual insurance company (other than life or marine) paying a tax based upon "the gross amount of income" as defined in section 207 of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Jo Dudley Cook, Joseph Vance Building, Seattle 1, Washington, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1942

Computation of Net Income

Gross Amount of Net Income Under Section
207 (a) (2)

Gross income under section 207 (a) (1) and (3), Line 5 of 1942 return.....	\$ 242,971.08
Add: Interest income erroneously reduced by in- terest paid	1,242.73
Corrected gross investment income.....	\$ 244,213.81
Net premiums, United States.....	\$7,381,054.65
Net premiums, Canada	\$ 681,111.30
Converted at 90.909%.....	619,191.47
	<u>\$8,000,246.12</u>
Less: Dividends to policy-holders:	
United States	\$1,347,259.56
Canada \$155,242.77 convert- ed at 90.909%....	141,129.65
	<u>\$1,488,389.21</u>
Interest wholly exempt	39,750.00
	<u>1,528,139.21</u>
	<u>\$6,472,106.91</u>
Gross amount of income section 207 (a) (2).....	<u><u>6,716,320.72</u></u>

Computation of Tax

Under Section 207 (a) (1) and (3)	
Normal tax net income per return.....	\$126,451.85
Tax at 24% on \$126,451.85.....	\$ 30,348.44
Net income, Item 14, Page 1 of return..	\$199,657.79
Less: Dividends received credit.....	41,611.33
	<u>\$158,046.46</u>
Surtax net income	25,287.43
Surtax at 16% on \$158,046.46.....	
	<u>\$ 55,635.87</u>
Tax under section 207 (a) (1) and (3).....	
Under Section 207 (a) (2)	
Gross amount of income section 207(a) (2) above	\$6,716,320.72
Tax at 1% on \$6,716,320.72.....	\$ 67,163.21
Tax applicable (greater of tax under section 207 (a) (1) and (3) or section 207 (a) (2)).....	\$ 67,163.21
Tax assessed, Account No. 5-496000.....	62,074.18
	<u>\$ 5,089.03</u>
Deficiency in tax.....	

Taxable Year Ended December 31, 1943
Computation of Net Income

Gross Amount of Income Under Section
207 (a) (2)

Gross income under section 207 (a) (1) and (3), line 5 of 1943 return.....	\$266,722.51	
Add: To correct gross income, add amount by which interest re- ceived on return was reduced by interest paid.....	931.88	
	<hr/>	\$267,654.39
Deduct: Liquidating dividend received which was included in tax- able dividends on return....	135.00	
	<hr/>	
Corrected gross investment income..		\$ 267,519.30
Net premiums, United States.....	\$7,758,443.62	
Net premiums, Canada..	\$ 684,416.33	
Converted at 90.909%.....	622,196.04	
	<hr/>	\$8,380,639.66
Less: Dividends to policyholders:		
United States	\$1,448,978.24	
Canada \$128,382.58		
Converted at 90.909%	116,711.32	
	<hr/>	\$1,565,689.56
Interest wholly exempt	37,401.52	1,603,091.08
	<hr/>	<hr/>
Gross amount of income, section 207 (a) (2).....		<u><u>\$7,045,067.97</u></u>

Computation of Tax
Under Section 207 (a) (1) and (3)

Normal-tax net income, same as re-	
turn	\$ 151,828.23
Tax at 24% on \$151,828.23.....	\$ 36,438.78
Net income, Item 14, Page 1 of re-	
turn	\$224,927.98
Less: Dividends received	
credit	43,899.32
	<hr/>
Surtax net income.....	\$181,028.66
Tax at 16% on	
\$181,028.66	28,964.59
	<hr/>
	\$ 65,403.37
	<hr/> <hr/>

Under Section 207 (a) (2)	
Gross amount of income.....	\$7,045,067.97
Tax at 1% on \$7,045,067.97.....	\$ 70,450.68
Tax assessed, Original Account	
No. 5-496001	65,102.87
	<hr/>
Deficiency in tax.....	\$ 5,347.81
	<hr/> <hr/>

Received and filed Oct. 14, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

1. Admits that petitioner is a mutual fire insurance corporation organized and operating under the laws of the State of Washington, and is engaged in business in the United States and in Prov-

inces of Canada, with principal office at 217 Pine Street, Seattle, Washington. Admits that petitioner's Federal income tax returns for the years 1942 and 1943 were filed with the Collector of Internal Revenue, for the District of Washington, at Tacoma, Washington.

2. Admits the allegations contained in paragraph 2 of the petition.

3. a and b. Admits that the taxes in controversy are income taxes for the calendar years 1942 and 1943. Admits that the amounts in dispute are as set forth in subparagraphs a and b of paragraph 3 of the petition.

4. Denies that in determining the deficiencies asserted for the years involved, the respondent committed any errors and specifically denies the allegations of error contained in paragraph 4 of the petition.

5a. (1) and (2). Admits the allegations contained in sub-paragraphs (1) and (2) of paragraph 5a of the petition.

5b. (1) and (2). Admits the allegations contained in sub-paragraphs (1) and (2) of paragraph 5b of the petition.

5c. (1) and (2). Admits that the petitioner filed timely claims for refunds of 1942 and 1943 income taxes based upon the contention that petitioner did not claim the full amount of credit on its original returns for the full amount of the Canadian taxes paid during said years. Admits that the refunds

so claimed by the petitioner for the taxable years 1942 and 1943 are in the respective amounts of \$10,183.13 and \$10,854.73.

5d. Admits that during the years 1942 and 1943 petitioner, a mutual corporation, was exempt from taxation in Canada on its net income from Canadian business under the provisions of the Income War Tax Act, Revised Statutes of Canada of 1927, as amended, Chapter 97, particularly Section 4(g) thereof.

5e. (1) and (2). Admits the allegations contained in subparagraphs (1) and (2) of paragraph 5e of the petition.

5f. Admits that petitioner paid the taxes mentioned in paragraph 5e of its petition to the Dominion of Canada for the years 1942 and 1943 under the provisions of the Special War Revenue Act, Revised Statutes of Canada, 1927, as amended, Chapter 179. For lack of information upon which to base an opinion as to the correctness of the remaining allegations contained in paragraph 5f of the petition, the same are denied.

5g. (1) and (2). Admits that in 1942 the Dominion of Canada amended the Special War Revenue Act by the enactment of new provisions which levied increased taxes upon certain types of fire insurance companies. For lack of information concerning the correctness of the remaining allegations contained in subparagraphs (1) and (2) of paragraph 5g of the petition, the same are denied.

5h. (1), (2) and (3). Denies the allegations contained in subparagraphs (1), (2) and (3) of paragraph 5h of the petition.

5i. Admits that the respondent notified petitioner by letter dated July 18, 1947, and statement attached thereto, that deficiencies of \$5,089.03 and \$5,347.81 were proposed for assessment against it for the years 1942 and 1943, respectively, and in the statement attached to said letter notified petitioner that its claims for refunds of \$10,183.13 and \$10,854.73 for the years 1942 and 1943, respectively, would be disallowed by respondent unless the issues involved in the claims for refunds were made a part of the petition to this Court.

6. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of deficiency be approved.

/s/ CHARLES OLIPHANT, WHP.

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and filed Nov. 20, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties to the above-entitled action as follows:

1. That the Petitioner is a mutual fire insurance corporation organized and operating under the laws of the State of Washington, and is duly authorized, and engaged in the business of writing insurance against the perils of fire and allied lines in all states of the United States and in Canada, with its principal office at 217 Pine Street, Seattle, Washington; that income tax returns for the periods involved in the above-entitled action were filed with the Collector of Internal Revenue for the District of Washington, at Tacoma, Washington, within and under extensions of time allowed by the Commissioner.

2. That the notice of deficiency with statement attached (a copy of which is attached to the Petition herein) was mailed to the Petitioner on July 18, 1947.

3. That the taxes in controversy are income taxes for the calendar years 1942 and 1943 and the amounts in dispute are as follows:

a. For the year 1942 the Commissioner asserts a deficiency of \$5,089.03; whereas for said year Petitioner claims a refund of \$10,183.13;

b. For the year 1943 the Commissioner asserts a deficiency of \$5,347.81; whereas for said year Petitioner claims a refund of \$10,854.73.

4. That Petitioner made a timely filing of 1942 and 1943 income tax returns on Form 1120 M under extensions granted by the Commissioner; that said returns were made on the accrual basis; that Petitioner made a timely payment of Petitioner's tax due in accordance with the calculations in Petitioner's returns for each of the years 1942 and 1943 as hereinafter set forth, and that in said returns foreign tax credits were claimed as hereinafter set forth:

a. For the year 1942 Petitioner made timely payment of the full amount of Petitioner's tax due in accordance with the calculations in Petitioner's original return for the year 1942; that said tax was paid in instalments in the following amounts as set forth below:

March 15, 1943.....	\$17,500.00	
June 11, 1943.....	13,537.10	
	<hr/>	\$31,037.10
September 14, 1943.....	\$15,518.54	
December 14, 1943.....	15,518.54	
	<hr/>	31,037.08
		<hr/>
		\$62,074.18

b. For the year 1943 Petitioner made timely payment of the full amount of Petitioner's tax due in accordance with the calculations in Petitioner's original return for the year 1943; that said tax was

paid in instalments in the following amounts as set forth below:

March 15, 1944.....	\$17,500.00	
June 15, 1944.....	15,051.44	
	<hr/>	\$32,551.44
September 14, 1944.....	\$16,275.72	
December 13, 1944.....	16,275.71	
	<hr/>	32,551.43
		<hr/>
		\$65,102.87

c. For the taxable year 1942 a foreign tax credit of \$5,076.60 was claimed;

d. For the taxable year 1943 a foreign tax credit of \$5,339.84 was claimed;

e. That upon audit of Petitioner's tax returns for 1942 and 1943 the Petitioner's tax without deduction for foreign tax credit was established at:

(1) \$67,163.21 for the year 1942;

(2) \$70,450.68 for the year 1943.

5. That Petitioner filed timely claims for refunds for 1942 and 1943 income taxes paid, which were made on the basis that Petitioner did not claim credit on Petitioner's original returns for the full amount of Canadian taxes paid by Petitioner during said periods; and further Petitioner claims to have made an error in the calculation of the foreign tax credit; that Petitioner's claims for refunds were as follows:

a. For the year 1942 Petitioner claimed an additional foreign tax credit in the amount of \$10,195.56 over and above the foreign tax credit claimed in Petitioner's return; that Petitioner's claim acknowledged that the gross refund claimed for 1942 should be reduced by the amount of \$12.43, representing an adjustment not in dispute; that Petitioner claimed a net refund of \$10,183.13;

b. For the year 1943 Petitioner claimed an additional foreign tax credit in the amount of \$10,862.70 over and above the foreign tax credit claimed in Petitioner's return; that Petitioner's claim acknowledge that the gross refund claimed for 1943 should be reduced by the amount of \$7.97, representing an adjustment not in dispute; that Petitioner claimed a net refund of \$10,854.73.

6. For the tax years 1942 and 1943 the Petitioner's normal-tax net income for the purpose of the tax return Form 1120 M, Line 19, Page 1, from all sources, and the portion thereof from sources in the Dominion of Canada (converted to U. S. funds) were as follows:

a. For the year 1942:

(1) From all sources \$126,451.85;

(2) From sources in the Dominion of Canada (converted to U. S. funds) \$37,843.46.

b. For the year 1943:

(1) From all sources \$151,828.23;

(2) From sources in the Dominion of Canada (converted to U. S. funds) \$40,943.06.

7. For the taxable years 1942 and 1943 the Petitioner's gross amount of income from all sources, and its gross amount of income from sources in the Dominion of Canada (converted to U. S. funds) was as follows:

a. For the year 1942:

(1) Petitioner's gross amount of income from all sources was \$6,716,320.72;

(2) Petitioner's gross amount of income from sources in the Dominion of Canada (converted to U. S. funds) was \$507,681.54.

b. For the year 1943:

(1) Petitioner's gross amount of income from all sources was \$7,045,067.97;

(2) Petitioner's gross amount of income from sources in the Dominion of Canada (converted to U. S. funds) was \$533,987.07.

8. That during the years 1942 and 1943 Petitioner, a mutual fire insurance corporation, was not liable to tax on its net income from Canadian business under the provisions of the Canadian Income War Tax Act of 1917, as amended by Chapter 97, the provisions of which are set forth in the Revised Statutes of Canada of 1927, the pertinent provisions of which are as follows:

“Section 4. Incomes not liable to tax.—The following income shall not be liable to taxation hereunder:—

* * *

“(g) Mutual corporations.—The income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the profit of any member thereof, and of life insurance companies except such amount as is credited to shareholders’ account;”

9. That for the years 1942 and 1943 the Petitioner paid to the Dominion of Canada the following taxes on the “net premiums” of the Petitioner:

a. For the year 1942 an amount in Canadian funds equivalent to \$15,272.16 United States funds; that said tax was based upon the “net premiums” of Petitioner on its business in Canada; and that for said year the tax rate applicable to the Petitioner was 3%;

b. For the year 1943 an amount in Canadian funds equivalent to \$16,202.54 United States funds; that said tax was based upon the “net premiums” of the Petitioner on its business in Canada; and that for said year the tax rate applicable to the Petitioner was 3%.

10. That the Petitioner paid the aforementioned taxes to the Dominion of Canada for the years 1942 and 1943 under the provisions of the Special War Revenue Act originally enacted in 1915, con-

tained in the Revised Statutes of Canada of 1927, as amended in 1942 by Chapter 32 of the Special War Revenue Act, Part III, the pertinent provisions of which are as follows:

“Section 13. Definitions.—In this Part, unless the context otherwise requires

* * *

“(f) ‘Net premiums’ means, in the case of a company transacting life insurance, the gross premiums received by the company other than the consideration received for annuities, less premiums returned and less the cash value of dividends paid or credited to policyholders; and, in the case of any other company, the gross premiums received or receivable by the company or paid or payable by the insured less the rebates and return premiums paid on the cancellation of policies; Provided that in the case of a mutual company which carries on business on the premium deposit plan and in the case of an exchange ‘net premiums’ means the actual net cost of the insurance to the insured during the taxation period together with interest on the excess of the premium deposit over such net cost at the average rate earned by the company on its funds during the said period;—

* * *

“Section 14. Tax on certain insurance companies upon net premiums.—

“1. Every company authorized under the laws of the Dominion of Canada or of any province thereof,

to transact the business of insurance, other than an association of persons formed on the plan known as Lloyds, a mutual company not carrying on the business of life insurance, and an exchange, shall pay to the Minister a tax of two per centum upon the net premiums received by it in Canada less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter.

“2. Every association of persons formed on the plan known as Lloyds, and every mutual company not carrying on the business of life insurance and not carrying on business on the premium deposit plan, authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance, shall pay to the Minister a tax of three per centum upon the net premiums received by it in Canada, less net premiums paid, for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter.

“3. Every mutual company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance and which carries on business on the premium deposit plan and every exchange so authorized shall pay to the Minister a tax of four per centum upon the net premiums received by it in Canada during the calendar year 1941 and each calendar year thereafter.”

11. That in 1942 the Dominion of Canada amended the aforementioned Special War Revenue Act of 1915 by the enactment of Chapter 32 of the Statutes of 1942, and that said amendment changed the provisions of the Special War Revenue Act:

a. Previous to the enactment of said amendment all fire insurance companies doing business in the Dominion of Canada, including this Petitioner, were required by the provisions of the Special War Revenue Act to pay to the Dominion of Canada a tax of 1% on their net premiums from their business within the Dominion of Canada in accordance with the following provision of said law:

(Special War Revenue Act of Canada of 1915, Chapter 179, Part 3, Section 14.)

“Section 14. Every company, licensed or registered or otherwise authorized to transact in Canada or in any province thereof, the business of insurance shall pay to the Minister a tax of one per cent upon the net premiums received by it in Canada on and after the first day of January in any year.”

b. Upon the enactment of said Chapter 32 of the Statutes of 1942, provision was made for increasing the net premium tax on all fire insurance companies doing business in Canada, including this Petitioner, and that the basis for said tax was the “net premiums” of said companies from their business within the Dominion of Canada (See Special War Revenue Act of 1915 as amended to date; con-

tained in Chapter 179, R. S. 1927; Chapter 32, Laws of 1942, Part III, Sections 13 and 14, the pertinent provisions of which are quoted at length in Paragraph 10 hereof):

(1) For all fire insurance companies which were subject by Canadian law to taxation on their net income under the Income War Tax Act of 1917 (which did not include this Petitioner) the Special War Revenue Act of 1915, as amended by Chapter 32 of the Statutes of 1942, imposed a tax at the rate of 2% on their "net premiums" as follows:

"Section 14. 1. Every company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance, other than an association of persons formed on the plan known as Lloyds, a mutual company not carrying on the business of life insurance and an exchange, shall pay to the Minister a tax of two per centum upon the net premiums received by it in Canada less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter."

(2) For all mutual fire insurance companies, including the Petitioner herein, not subject to taxation on their net income under the provisions of the Canadian Income War Tax Act of 1917 (See Income War Tax Act of 1917 contained in Revised Statutes of Canada of 1927 as amended by Chapter 97, Section 4, subsection (g), the pertinent pro-

visions of which are quoted in Paragraph 8 hereof), the Special War Revenue Act of 1915, as amended by Chapter 32 of the Statutes of 1942, imposed a tax at the rates of 3% and 4% on the "net premiums" as follows:

"Section 14. 2. Every association of persons formed on the plan known as Lloyds, and every mutual company not carrying on the business of life insurance and not carrying on business on the premium deposit plan, authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance, shall pay to the Minister a tax of three per centum upon the net premiums received by it in Canada, less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter.

"Section 14. 3. Every mutual company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance and which carries on business on the premium deposit plan and every exchange so authorized shall pay to the Minister a tax of four per centum upon the net premiums received by it in Canada during the calendar year 1941 and each calendar year thereafter."

12. That in the Dominion of Canada the Special War Revenue Act of 1915 and the Income War Tax Act of 1917 are administered as follows:

a. The taxes on insurance companies levied

under the Special War Revenue Act of 1915, Chapter 179, as contained in Revised Statutes of Canada of 1927, as amended, are payable to the Minister of Finance:

(1) The administrative details of collection and audit of taxes payable by insurance companies under the Special War Revenue Act of 1915, as amended, are handled by the Department of Insurance;

(2) Taxes other than taxes on insurance companies payable under the Special War Revenue Act of 1915, as amended, are handled as to the details of collection and audit by the Department of National Revenue.

b. The income taxes levied under the Canadian Income War Tax Act of 1917, Chapter 97, contained in Revised Statutes of Canada of 1927, as amended, are payable to the Minister of National Revenue:

(1) The general administration and the auditing of returns for taxpayers, other than insurance companies, under the Income War Tax Act is handled by the Department of National Revenue;

(2) The auditing of the income tax returns of insurance companies which are subject to the provisions of the Income War Tax Act is handled by the Department of Insurance.

13. The Income War Tax Act of Canada originally enacted in 1917 was amended in 1946 so that mutual fire insurance companies such as the Peti-

tioner (excepting only those mutual fire insurance companies deriving their premiums wholly from the insurance of churches, schools, or other religious, educational or charitable institutions) were made subject to the general income tax law of Canada (See Canadian Income War Tax Act of 1917, Chapter 28; contained in Revised Statutes of Canada of 1927, Chapter 97, as amended by Part I, Section 3, which defines taxable income as follows:

“Section 3. “Income”.—1. For the purposes of this Act, “income” means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be whether derived from sources within Canada or elsewhere; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and, whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source——.”

and Part II, Section 4, subparagraph (g), which defines excepted incomes as follows:

“Section 4. Incomes not liable to tax.—The fol-

lowing income shall not be liable to taxation hereunder:—

* * *

“(g) Mutual corporations.—The income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the benefit of any member thereof, except mutual insurance corporations that do not derive their premiums wholly from the insurance of churches, schools or other religious, educational or charitable institutions——”).

Prior to the enactment in 1946 of the above amendment to the Income War Tax Act of 1917 mutual fire insurance companies, such as the Petitioner, were not liable to tax under the provisions of Section 4, subsection (g) of the Income War Tax Act of 1917 (See Income War Tax Act of 1917, Section 4, subsection (g), the pertinent provisions of which are quoted in Paragraph 8 hereof).

14. That in 1946 at the time of the enactment of the amendment to the Income War Tax Act of 1917, the provisions of which are referred to in Paragraph 13 hereof, the Special War Revenue Act (the net premium tax), as amended in 1942, was changed as follows: (See Special War Revenue Act of 1915, as amended by Chapter 32, Section 14, subsection (2), Statutes of 1942; and Special War

Revenue Act of 1915, as amended by Chapter 65, Section 14, subsection (1), Statutes of 1946).

a. That the rate of said tax on mutual fire insurance companies, such as the Petitioner, was 3% on "net premiums" under the 1942 amendment and prior to the 1946 amendment referred to herein (See Special War Revenue Act of 1915, as amended by Chapter 32, Section 14, subsection (2) Statutes of 1942, the pertinent provisions of which are quoted in Paragraph 10 hereof).

b. That upon the enactment of the 1946 amendment referred to herein, the rate of said tax on mutual fire insurance companies, such as the Petitioner, was reduced from 3% to 2% (See Special War Revenue Act of 1915, as amended by Chapter 65, Laws of 1946, Section 14, subparagraph (1), which reads as follows:

"Section 14. 1. Every company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance, other than an association of persons formed on the plan known as Lloyds, and an exchange, shall pay to the Minister a tax of two per centum upon the net premiums received by it in Canada less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1947 and each calendar year thereafter.")

c. The 1946 amendments to the Special War

Revenue Act also changed the name of the Act to the "Canadian Excise Tax Act."

15. That at the time of the amendment of Section 131 of the United States Internal Revenue Code in 1942, the Committee on Finance of the Senate had this to say concerning subsection (h) of Section 131:

"Your committee believes further amendments should be made in section 131. Under that section as it now stands, a credit is allowed against United States Tax for income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States. In the interpretation of the term 'income tax', the Commissioner, the Board, and the Courts have consistently adhered to a concept of income tax rather closely related to our own, and if such foreign tax was not imposed upon a basis corresponding approximately to net income it was not recognized as a basis for such credit. Thus, if a foreign country in imposing income taxation authorized, for reasons growing out of the administrative difficulties of determining net income or taxable basis within that country, a United States domestic corporation doing business in such country to pay a tax in lieu of such income tax but measured, for example, by gross income, gross sales or a number of units produced within the country, such tax has not heretofore been recognized as a basis for credit. Your committee has deemed it desirable to extend the scope of this

section. Accordingly, subsection (f) of section 160 provides that the term 'income, war profits, and excess profits taxes' shall, for the purpose of sections 131 and 23(c)(1), include a tax paid by a domestic taxpayer in lieu of the tax upon income, war profits, and excess profits taxes which would otherwise be imposed upon such taxpayer by any foreign country or by any possession of the United States. The limitation upon the amount of the credit will, of course, continue to apply, so that it will be allowed only if and to the extent the taxpayer has net income from sources within the foreign country or from sources without the United States, as the case may be."

16. That the Respondent notified the Petitioner by letter IT:90D:FCH, dated July 18, 1947, and statement attached thereto, that deficiencies of \$5,089.03 and \$5,347.81 were proposed for assessment for the years 1942 and 1943 respectively, and in the statement attached to said letter (a copy of said statement being attached to the Petition), notified the Petitioner that its claims for refunds of \$10,183.13 and \$10,854.73 for the years 1942 and 1943 respectively would be disallowed by Respondent unless the issues involved in the claims for refunds were made a part of the petition to this Court.

17. That the Petitioner and the Respondent have agreed to offer in evidence the following original documents with the request that they be marked

as joint Exhibits as set forth herein, and with the request that the Court shall accept said original documents in evidence in this case but will permit the original documents to be withdrawn and photostatic copies of the same substituted therefor at such time as said photostatic copies may become available:

a. For the calendar year 1942 the following documents:

(1) Petitioner's Income Tax Return for the calendar year 1942 on Form 1120 M, Mutual Fire Insurance Company Tax Return, marked Exhibit 1 A;

2. Petitioner's statement in support of foreign tax credit claimed on Form 1118, which was attached to Petitioner's 1942 Income Tax Return, marked Exhibit 2 B;

3. Petitioner's claim for refund of 1942 taxes paid, as filed by Petitioner on Form 843, and certification of tax payments by the Collector on the reverse side of said form, marked Exhibit 3 C;

(4) Petitioner's statement in support of foreign tax credit claimed on Form 1118, which was attached to Petitioner's claim for refund of 1942 taxes paid, marked Exhibit 4 D;

(5) A copy of Petitioner's tax return made to the Dominion of Canada, showing taxes paid by Petitioner for 1942 under the Special War Revenue Act, marked Exhibit 5 E.

b. For the calendar year 1943 the following documents:

(1) Petitioner's Income Tax Return for the calendar year 1943 on Form 1120 M, Mutual Fire Insurance Company Tax Return, marked Exhibit 6 F;

(2) Petitioner's statement in support of foreign tax credit claimed on Form 1118, which was attached to Petitioner's 1943 Income Tax Return, marked Exhibit 7 G;

(3) Petitioner's claim for refund of 1943 taxes paid, as filed by Petitioner on Form 843; and certification of tax payments by the Collector on the reverse side of said form, marked Exhibit 8 H;

(4) Petitioner's statement in support of foreign tax credit claimed on Form 1118, which was attached to Petitioner's claim for refund of 1943 taxes paid, marked Exhibit 9 I;

(5) A copy of Petitioner's tax return made to the Dominion of Canada, showing taxes paid by Petitioner for 1943 under the Special War Revenue Act, marked Exhibit 10 J.

Dated at Seattle, Washington, this 17th day of May, 1948.

/s/ JO D. COOK,

Attorney for Petitioner.

/s/ CHARLES OLIPHANT,

W.H.P.

Attorney for Respondent.

Filed May 17, 1948 T.C.U.S.

Before the Tax Court of the United States

Docket No. 16147

NORTHWESTERN MUTUAL FIRE ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Before: Honorable Eugene Black,
Judge.

APPEARANCES

JO D. COOK, ESQ.,
appearing on behalf of the Petitioner.

WILFORD H. PAYNE, ESQ.,
appearing on behalf of the Commissioner
of Internal Revenue,
Respondent.

PROCEEDINGS

The Court: The Clerk will call the next case.

The Clerk: Docket No. 16147, Northwestern
Mutual Fire Association.

Mr. Payne: Wilford H. Payne, for the Respondent.

Mr. Cook: Jo D. Cook, for the Petitioner.

The Court: You may proceed.

Opening Statement on Behalf of the Petitioner

By Mr. Cook

Mr. Cook: Your Honor, the issues, are two issues in this matter. All the facts necessary for a decision have been stipulated. The question involves the right of the Petitioner to a credit for foreign taxes to the Dominion of Canada, and if they are entitled to that credit, the amount is stipulated. I have here, in duplicate form the stipulation, covering all the necessary facts which I should request leave to file at this time.

The Court: Very well, the stipulation of facts will be received as evidence in the case. Do you have anything else?

Mr. Cook: We have certain exhibits. I would like to have received in evidence the exhibits which are referred to in Paragraph 17 of the stipulation, and it is understood that that they come from the Respondent's files and are to be returned to the Respondent upon substitution of photostatic copies.

The Court: Well, that understanding will be noted.

Mr. Cook: Mr. Payne is more familiar with the procedure, and I will ask that he take care of the matter of the receipt in evidence of the exhibits.

Mr. Payne: The parties offer at this time, pursuant to 17-A-1 of the stipulation, the income tax return of the Petitioner for the year 1942, to be marked, pursuant to our stipulation, as Joint Exhibit 1-A.

The Court: It will be received as Joint Exhibit 1-A.

(The document referred to was marked and received in evidence as Joint Exhibit 1-A.)

Mr. Payne: We also offer at this time, in accordance with Paragraph 17-A-2 of the stipulation, the Petitioner's statement in support of foreign tax credits on Form 1118, to be marked as Joint Exhibit No. 2.

The Court: It will be received in evidence and marked as Joint Exhibit No. 2.

(The document referred to was marked and received in evidence as Joint Exhibit 2-B.)

Mr. Payne: In accordance with Paragraph 17-A-3 of the stipulation, a claim for refund for the year 1942, which we ask be marked as Joint Exhibit 3-C.

The Court: It will be received as Joint Exhibit 3-C.

(The document referred to was marked and received in evidence as Joint Exhibit 3-C.)

Mr. Payne: In accordance with Paragraph 17-A-4 of the stipulation, in evidence, we offer Petitioner's statement in support of foreign tax credit on Form 1118, which was attached to its claim for refund, just introduced. We offer this as Joint Exhibit 4-D.

The Court: It will be received as Joint Exhibit 4-D.

(The document referred to was marked and received in evidence as Joint Exhibit 4-D.)

Mr. Payne: In accordance with Paragraph 17-A-5 of the stipulation, the parties offer the Petitioner's tax return made to the Dominion of Canada, identified in the stipulation as Joint Exhibit 5-E.

The Court: It will be received as Joint Exhibit 5-E.

(The document referred to was marked and received in evidence as Joint Exhibit 5-E.)

Mr. Payne: Now, coming to Paragraph 17-B-1 of the stipulation, the Petitioner's income tax return for the year 1943, we offer that as Joint Exhibit 6-F.

The Court: It will be received and marked as Exhibit 6-F.

(The document referred to was marked and received in evidence as Joint Exhibit 6-F.)

Mr. Payne: In accordance with Paragraph 17-B-2 of the stipulation, we offer the statement in support of foreign tax credit on Form 1118, which we will ask be marked as Joint Exhibit 7-G.

The Court: It will be received as Joint Exhibit 7-G.

(The document referred to was marked and received in evidence as Joint Exhibit 7-G.)

Mr. Payne: We offer a document identified in Paragraph 17-B-3 of the stipulation as Joint Ex-

hibit 8-H, which is a claim for refund for the year 1943.

The Court: It will be received as Joint Exhibit 8-H.

(The document referred to was marked and received in evidence as Joint Exhibit 8-H.)

Mr. Payne: The parties offer at this time, a document identified in Paragraph 17-B-4 of the stipulation as Joint Exhibit 9-I.

The Court: It will be received in evidence as Joint Exhibit 9-I.

(The document referred to was marked and received in evidence as Joint Exhibit 9-I.)

Mr. Payne: The parties offer a document identified in Paragraph 17-B-5 of the stipulation as Joint Exhibit 10-J.

The Court: It will be received as Joint Exhibit 10-J.

(The document referred to was marked and received in evidence as Joint Exhibit 10-J.)

The Court: Now, you desire to file briefs simultaneously under the terms granted under the rules?

Mr. Payne: That would be satisfactory.

The Court: That will be July 5 for the briefs, allowing the full 45 days.

Mr. Cook: July 5?

The Court: Yes. And then thereafter you may file a reply brief, if you care to do so, on July 25.

Mr. Payne: That is agreeable.

Mr. Cook: Very, well, your Honor.

(Whereupon, at 11:20 a.m., May 17, 1948, the case was concluded.)

[Title of Tax Court and Cause.]

Promulgated March 30, 1949.

The petitioner, a domestic mutual fire insurance company doing business in Canada, paid taxes in 1942 and 1943 to Canada measured by the net premiums received in Canada, less premiums paid for reinsurance, in accordance with the provisions of the Canadian Special War Revenue Act of 1915, as amended. Held, the taxes paid upon the net premiums were not taxes "in lieu of a tax upon income" as those terms are used in section 131(h), I.R.C. and petitioner is not entitled to a credit for income taxes paid to a foreign government under section 131, I.R.C.

Jo D. Cook, Esq., for the petitioner.

Wilford H. Payne, Esq., for the respondent.

OPINION

Black, Judge:

This proceeding involves deficiencies in petitioner's income taxes for the years 1942 and 1943 in the respective amounts of \$5,089.03 and \$5,347.81. The petitioner claims refunds for the years 1942 and 1943 in the respective amounts of \$10,183.13 and \$10,854.73.

The deficiencies are due primarily to the disallowance of foreign tax credits claimed in the petition-

er's income tax returns for the calendar years 1942 and 1943 in the respective amounts of \$5,076.60 and \$5,339.84 as income taxes paid to the Dominion of Canada. The respondent in the deficiency notice explained this disallowance as follows:

The foreign tax credits claimed in your income tax returns for the calendar years 1942 and 1943, in the respective amounts of \$5,076.60 and \$5,339.84, as income taxes paid to the Dominion of Canada, have been disallowed for the reason that the stated taxes do not constitute "income, war profits or excess profits taxes paid in lieu of a tax upon income, war profits, or excess profits otherwise generally imposed" by Canada. The evidence indicates that the taxes in question were in the nature of an excise imposed under the Special War Revenue Act of Canada and therefore do not meet the requirements of section 131 of the Internal Revenue Code in respect to allowable credits.

For the stated reasons it has been determined also that your claims for refund in the respective amounts of \$10,183.13 and \$10,854.73 should be disallowed for the years 1942 and 1943. The claims for refund are disallowed on the additional ground that a proper application of the provisions of section 131 of the Internal Revenue Code negatives the use of investment income as the basis for computing the limitation factor provided for under subsection (b) thereof, in the case of a mutual insurance company (other than life or marine) paying a tax based upon "the gross amount of income"

as defined in section 207 of the Internal Revenue Code.

The petitioner by appropriate assignments of error contests these adjustments and claims refunds.

The case was submitted upon a stipulation of facts and joint exhibits which are adopted as our findings of fact. They may be summarized as follows:

The petitioner is a mutual fire insurance corporation organized and operating under the laws of the State of Washington, and is duly authorized and engaged in the business of writing insurance against the perils of fire and allied lines in all states of the United States and in Canada, with its principal office in Seattle, Washington. Its income tax returns for the years 1942 and 1943 were prepared on the accrual basis and were filed with the collector of internal revenue for the district of Washington at Tacoma, Washington within and under extensions of time allowed by the Commissioner.

In the years 1942 and 1943 the petitioner paid to the Dominion of Canada amounts in Canadian funds equivalent to \$15,272.16 and \$16,202.54, respectively, in United States funds in taxes in accordance with the provisions of the Canadian Special War Revenue Act of 1915, as amended in 1942.¹ The said tax was based upon the "net premiums" of petitioner on its business in Canada and for said years the tax rate applicable to petitioner was three per cent.

¹Special War Revenue Act of 1915 contained in the Revised Statutes of Canada of 1927, as amended

In petitioner's returns for the years 1942 and 1943 it claimed foreign tax credits in the respective amounts of \$5,076.60 and \$5,339.84.

The petitioner's gross amount of income for the years 1942 and 1943 from all sources was \$6,716,320.72 and \$7,045,067.97, respectively, and its gross amount of income from sources in the Dominion of Canada (converted to United States funds) was \$507,681.54 and \$533,987.07, respectively.

In the years 1942 and 1943 the petitioner's nor-

in 1942 by Chapter 32 of the Special War Revenue Act, Part III.

Section 13. Definitions.—In this Part, unless the context otherwise requires

* * *

(f) "Net premiums" means, in the case of a company transacting life insurance, the gross premiums received by the company other than the consideration received for annuities, less premiums returned and less the cash value of dividends paid or credited to policyholders; and, in the case of any other company, the gross premiums received or receivable by the company or paid or payable by the insured less the rebates and return premiums paid on the cancellation of policies; provided that in the case of a mutual company which carries on business on the premium deposit plan and in the case of an exchange "net premiums" means the actual net cost of the insurance to the insured during the taxation period together with interest on the excess of the premium deposit over such net cost at the average rate earned by the company on its funds during the said period;—

* * *

Section 14. Tax on certain insurance companies upon net premiums.—

1. Every company authorized under the laws of

mal tax net income from all sources was \$126,451.85 and \$151,828.23, respectively, while for said years petitioner's normal tax net income from sources in the Dominion of Canada (converted to United States funds) was \$37,843.46 and \$40,943.06, respectively.

During the years 1942 and 1943 petitioner was not liable to tax on its net income from Canadian

the Dominion of Canada or of any province thereof, to transact the business of insurance, other than an association of persons formed on the plan known as Lloyds, a mutual company not carrying on the business of life insurance, and an exchange, shall pay to the Minister a tax of two per centum upon the net premiums received by it in Canada less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter.

2. Every association of persons formed on the plan known as Lloyds, and every mutual company not carrying on the business of life insurance and not carrying on business on the premium deposit plan, authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance, shall pay to the Minister a tax of three per centum upon the net premiums received by it in Canada, less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1941 and each calendar year thereafter.

3. Every mutual company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance and which carries on business on the premium deposit plan and every exchange so authorized shall pay to the Minister a tax of four per centum upon the net premiums received by it in Canada during the calendar year 1941 and each calendar year thereafter.

business under the provisions of the Canadian Income War Tax Act of 1917, as amended by chapter 97, the provisions of which are set forth in the revised Statutes of Canada of 1927.²

Prior to the year 1942 the petitioner was required by the provisions of the Special War Revenue Act of 1915 to pay to the Dominion of Canada a tax of one per cent on its net premiums from its business within the Dominion of Canada.³

In 1942 the Dominion of Canada amended the Special War Revenue Act of 1915 by the enactment of chapter 32 of the Statutes of 1942, heretofore set out, increasing the net premium tax on all fire insurance companies doing business in Canada, including the petitioner and the basis for said tax was the "net premiums" of said companies from their business within the Dominion of Canada. For

²Section 4. Incomes not liable to tax.—The following income shall not be liable to taxation hereunder:—

* * *

(g) Mutual corporations.—The income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the profit of any member thereof, and of life insurance companies except such amount as is credited to shareholders' account; * * *

³Special War Revenue Act of 1915, Chapter 179
Part 3.

Section 14. Every company, licensed or registered or otherwise authorized to transact in Canada or in any province thereof, the business of insurance shall pay to the Minister a tax of one per cent upon the net premiums received by it in Canada on and after the first day of January in any year.

all mutual fire insurance companies such as the petitioner, not subject to taxation on their net income under the provisions of the Canadian Income War Tax Act of 1917, the rate was increased from one to three per cent. For all fire insurance companies which were subject by Canadian law to taxation on their net income under the Income War Tax Act of 1917 (which did not include this petitioner) the rate was increased from one to two per cent.

In the year 1946 the Canadian revenue measures were revised and the Income War Tax Act originally enacted in 1917 was amended so that mutual fire insurance companies such as petitioner (excepting only those mutual fire insurance companies deriving their premiums wholly from the insurance of churches, schools, or other religious, educational or charitable institutions) were made subject to the general income tax law of Canada.⁴ Prior to the enactment in 1946 of the above amendment to

⁴Canadian Income War Tax Act of 1917, chapter 28, contained in the Revised Statutes of Canada of 1927, chapter 97, as amended by Part I, Section 3 and Part II, Section 4.

Part I, Section 3. "Income."—1. For the purposes of this Act, "income" means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be whether derived from

the Income War Tax Act of 1917, mutual fire insurance companies such as petitioner were not liable to tax under the provisions of the Income War Tax Act of 1917 as hereinabove set out.

Concurrent with the above change in the Income War Tax Act of 1917 the Special War Revenue Act of 1915, as amended in 1942, was amended further changing the name of the act from "Special War Revenue Act" to the "Canadian Excise Tax Act," and said amendment further provided that the rate of tax upon the net premiums for mutual fire insurance companies, such as petitioner, should be reduced from three per cent to two per cent.⁵

⁵Special War Revenue Act of 1915, as amended by chapter 65, Laws of 1946, Section 14.

Section 14. 1. Every company authorized under the laws of the Dominion of Canada or of any province thereof, to transact the business of insurance, other than an association of persons formed on the plan known as Lloyds, and an exchange, shall pay to the Minister a tax of two per centum upon the net premiums received by it in Canada less net premiums paid for reinsurance to companies or associations to which this section applies, during the year 1947 and each calendar year thereafter.

sources within Canada or elsewhere; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and, whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source.

* * *

Part II, Section 4. Incomes not liable to tax.—

In 1942 and 1943 the taxes imposed under the Special War Revenue Act of 1915, as amended, and the Income War Tax Act of 1917, as amended, were paid to the Minister of National Revenue, sometimes referred to as the Minister of Finance.

In the years 1942 and 1943 the administrative details of collection and auditing of taxes payable by insurance companies under the Special War Revenue Act of 1915, as amended, and the auditing of income tax returns of insurance companies which were subject to the provisions of the Income War Tax Act, as amended, were handled by the Department of Insurance.

In the years 1942 and 1943 the details of collection and auditing of taxes other than taxes on insurance companies payable under the Special War Revenue Act of 1915, as amended, and the general administration and the auditing of returns of taxpayers other than insurance companies under the Income War Tax Act of 1917 were handled by the Department of National Revenue.

In its returns for the years 1942 and 1943 and

The following income shall not be liable to taxation hereunder:—

* * *

(g) Mutual corporations.—The income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the benefit of any member thereof, except mutual insurance corporations that do not derive their premiums wholly from the insurance of churches, schools or other religious, educational or charitable institutions * * *.

in The Statement in Support of Credit for the Foreign Tax Paid (Form 1118) for said years, petitioner computed the amount of credit on the gross amount of income for each year which constituted its taxable income and formed the basis under the statute for determining the amount of tax due in this country. On such basis and using the ratio of the total gross income from Canada (\$507,681.54 for 1942 and \$533,987.07 for 1943), to total gross income in its returns from all sources for those years (\$6,715,077.99 for 1942 and \$7,044,271.09 for 1943) the amounts of the credits so computed were \$5,076.60 and \$5,339.84 for the years 1942 and 1943, respectively. These claimed credits were disallowed by respondent in the deficiency notice.

In its claims for refunds for 1942 and 1943 and The Statements in Support of Credit for Foreign Taxes which were attached thereto, petitioner claimed that the credit for each year should be computed and determined upon the basis which the ratio of the "normal tax net income" from sources in Canada bears to the "normal tax net income" from all sources, i.e., in the ratio which the "normal tax net income" of \$37,843.46 from Canadian sources bears to the "normal tax net income" of \$126,451.85 from all sources for the year 1942; and in the ratio which the "normal tax net income" of \$40,943.06 from Canadian sources bears to "normal tax net income" of \$151,828.23 from all sources for the year 1943.

The questions presented by the pleadings and the evidence in this proceeding are:

1. Whether petitioner is entitled to a foreign tax credit under the provisions of section 131 of the Internal Revenue Code on account of the tax on its net premiums received in the Dominion of Canada and imposed by and paid to that country for the taxable years 1942 and 1943 pursuant to the provisions of the Canadian Special War Revenue Act of 1915, as amended.

2. If it should be determined that such credit is allowable, then the further question is whether the limitation upon the amount of the foreign tax credit for insurance companies such as petitioner is to be measured on the basis of the ratio of the "normal tax net income" from Canadian sources to "Normal tax net income" from all sources or on the basis of the ratio of the taxable amount of income from Canadian sources to the taxable amount of income from all sources. We do not get to the second question unless the first is decided in petitioner's favor.

Petitioner concedes that prior to the amendment of section 131 by the Revenue Act of 1942 the decisions of the courts were against it. Some of these cases were: *The Continental Insurance Co.*, 40 B.T.A. 540; *St. Paul Fire & Marine Ins. Co. v. Reynolds*, 44 Fed. Supp. 863, 29 AFTR 592. But petitioner strongly contends that by the enactment of section 131(h) carried in the 1942 Revenue Act and applicable to all taxable years after December

31, 1941, Congress broadened the base for the allowance of these foreign income tax credits and included in such credit allowance taxes imposed on a corporation "in lieu" of an income tax. Petitioner contends that the taxes for which it here claims credit were levied by the Dominion of Canada "in lieu" of income taxes.

Respondent contends that the Canadian tax on petitioner's net premiums for which credit is claimed is not a tax paid "in lieu of a tax upon income" as that phrase is used in subsection (h) of section 131 which may be allowed as a credit under the provisions of section 131(a)(1), but is an excise tax or a business privilege tax. The pertinent provisions of section 131 of the Internal Revenue Code are printed in the margin.⁶ Subsec-

⁶Sec. 131. Taxes of Foreign Countries and Possessions of United States.

(a) Allowance of Credit.—If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102, shall be credited with:

(1) Citizens and domestic corporations.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

* * *

(h) Credit for Taxes in Lieu of Income, Etc., Taxes.—For the purposes of this section and section 23(c)(1), the term "income, war-profits, and excess-profits taxes" shall include a tax paid in lieu of a tax upon income, war-profits, or excess-profits other-

tion (h) of section 131 was adopted as section 158(f) of the Revenue Act of 1942. At the time of the enactment of the above amendment to the Internal Revenue Code the Senate Finance Committee in its report (Report No. 1631, 77th Cong., 2nd Sess., p. 131) made the following pertinent comment:

Your committee believes further amendments should be made in section 131. Under that section as it now stands, a credit is allowed against United States Tax for income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States. In the interpretation of the term "income tax," the Commissioner, the Board, and the Courts have consistently adhered to a concept of income tax rather closely related to our own, and if such foreign tax was not imposed upon a basis corresponding approximately to net income it was not recognized as a basis for such credit. Thus, if a foreign country in imposing income taxation authorized, for reasons growing out of the administrative difficulties of determining net income or taxable basis within that country, a United States domestic corporation doing business in such country to pay a tax in lieu of such income tax but measured, for example, by gross income, gross sales or a number of units produced within

wise generally imposed by any foreign country or by any possession of the United States.

[Subsection (h) was added to the Internal Revenue Code by section 158(f) of the Revenue Act of 1942.]

the country, such tax has not heretofore been recognized as a basis for credit. Your committee has deemed it desirable to extend the scope of this section. Accordingly, subsection (f) of section 160 provides that the term "income, war profits, and excess profits taxes" shall, for the purpose of sections 131 and 23(c)(1), include a tax paid by a domestic taxpayer in lieu of the tax upon income, war profits, and excess profits taxes which would otherwise be imposed upon such taxpayer by any foreign country or by any possession of the United States. * * *

The premium tax here involved was first imposed by the provisions of the Special War Revenue Act of Canada which was enacted in 1915. The first income tax law of Canada known as the Income War Tax Act was enacted in 1917. Both acts have been in force since these dates and have been amended from time to time. The 1917 income tax act excepted from its provisions the income of mutual corporations such as petitioner not having a capital represented by shares, no part of the income of which inured to the profit of any member thereof. The rates of the net premium tax levied by the Special War Revenue Act of 1915 were increased by an amendment to that act in 1942 so that mutual fire insurance companies such as petitioner had their rates increased to three per cent. In 1946 the Special War Revenue Act of 1915, as amended, was again amended decreasing the rate of tax and the name of the act was changed to the "Canadian Excise Tax Act." In 1946 as a result

of an amendment to the Income War Tax Act of 1917, petitioner became subject to the income tax act but the tax on net premiums under the Special War Revenue Act was not removed. It was decreased from three per cent to two per cent.

The term "in lieu of" means in place of, instead of, or substituted for. See Webster's New International Dictionary (Second Edition, Unabridged.) *State v. Minneapolis & St. L. R. Co.*, 283 N. W. 244; *Mass. Bonding & Ins. Co. v. Rutley Const. Co.*, 287 N.Y.S. 662, 159 Misc. 392. That the Canadian premium tax does not qualify as a tax "in lieu of a tax upon income" seems to us to be quite apparent from the nature of the tax and from its history as set forth above. Prior to the enactment of subsection (h), *supra*, it had been held that the Canadian premium tax was not an income tax within the meaning of section 131(a)(1) of the Revenue Acts of 1932 and 1934 (similar to section 131(a)(1), I.R.C.) but was in the nature of an excise tax. *St. Paul Fire & Marine Ins. Co. v. Reynolds*, *supra*; *Continental Insurance Co.*, *supra*. Cf. *Helvering v. Queen Ins. Co.*, 115 Fed. (2d) 341. In the *Continental Insurance Co.* case we had before us the Special Canadian War Revenue Act of 1915 before it was amended by the War Revenue Act of 1942 and of it we said:

* * * The law in question imposed a tax of one per cent upon the net premiums received by an insurance company in Canada, less net premiums paid for reinsurance to other companies subject to the act. Net premiums were defined as gross prem-

iums received, less rebates and returns. Thus the tax was imposed upon the gross premiums for risks taken by the company. The insurance did not have to result in a profit to subject the company to the tax. It was more like an excise tax upon the privilege of doing business than like an income tax. * * *

In *St. Paul Fire & Marine Ins. Co. v. Reynolds*, supra, the court said: "Taxes imposed on insurance premiums for the privilege of transacting business long have been designated as an 'excise tax'." An excise tax is a charge for the privilege of following an occupation or trade, or carrying on a business. *Vinuo v. City of Seattle*, 120 Pac. 2nd 464, 11 Wash. 2nd 630; *Saviers v. Smith*, 128 N.E. 269, 101 Ohio St. 132. Cf. *Keasbey & Mattison Co. v. Rothensies*, 133 Fed. (2d) 894; *Commissioner of Insurance v. Commonwealth Mutual Liability Ins. Co.*, 32 N.E. 2nd 231, 308 Mass. 385.

We think it clear from the Senate Finance Committee's Report, heretofore quoted, that what Congress had in mind in providing in section 131(h) for a credit for a tax "in lieu of tax upon income," was a tax which was clearly a substitute for an income tax and not a tax imposed for the privilege of doing business in a foreign country. If the Canadian Government had first imposed the premium tax upon insurance companies in connection with the enactment of its Income War Tax Act in 1917 there might be some justification for saying that it was a substitute for a tax upon income and was to be measured by the amount of premiums collected but this premium tax was imposed in 1915, before

the income tax law was enacted. It was an excise tax at that time and its character as such was not changed by the subsequent enactment of the Income Tax Law of 1917. When the Canadian Government in 1946 decided to subject mutual insurance companies such as petitioner to income tax it did not eliminate the tax upon net premiums collected by such mutual insurance companies, it only decreased them. This, we think, as well as the whole history of the Canadian premium tax clearly indicates that Canada considered the premium tax as a separate and distinct tax from the income tax and not "in lieu" thereof. The fact that our Congress in the 1942 Revenue Act added section 131(h) so as to broaden the scope of the credit allowable under 131(a)(1) did not, in our opinion, change the character of the Canadian premium tax levied by its Special War Revenue Act of 1915, as amended, and make of it a tax levied in lieu of an income tax.

The instant case is distinguishable from *New York & Honduras Rosario Mining Co. v. Commissioner*, 168 Fed. (2d) 745, reversing 8 T.C. 1232 and *Santa Eulalia Mining Co.*, 2 T.C. 241. Both cases involved the allowance of a credit under section 131(a)(1) without reference to the later provisions contained in 131(h). In the *New York & Honduras Rosario Mining Co.* case the court said with reference to the tax there involved:

What a tax is called does not determine whether it is an income tax or an excise tax. *Flint v. Stone Tracy Co.*, 220 U. S. 107, 145. But we think it not

without significance that Honduras in its Mining Code does lay genuine excises, with forfeiture of the mining company's rights for non-payment, and also a tax on "liquid profits," without such forfeiture for non-payment, which is called an "income tax" in the contract approved by the national congress. Moreover, the tax on "liquid profits" is applicable to all miners, not merely to United States companies, and in general characteristics is indistinguishable from our own income tax. * * *

In the Santa Eulalia Mining Co. case, *supra*, after analyzing the tax in question, we said:

Thus, we have a tax which is repeatedly referred to in the levying statute as an income tax and which is computed on the basis of petitioner's gross revenue from its mining properties. Although the method of determining the tax does not conform strictly to that by which income taxes are computed under our own laws, we do not think that that determines the nature of the tax.

Thus, in both of the above cases it was determined that the tax in question was in effect an income tax and, therefore, allowable as a credit under section 131(a)(1), I.R.C.

In the instant case, as we have endeavored to point out, the Canadian net premiums tax was neither an income tax nor was it a tax levied in lieu of an income tax. Therefore, the credit which petitioner claims cannot be allowed.

Having decided that petitioner is not entitled to the credit under section 131(a)(1) for the premium

taxes paid to Canada, it is unnecessary to discuss issue 2.

Reviewed by the Court.

Decision will be entered for the respondent.

Van Fossan, J., dissents.

[Seal]

Served Mar. 30, 1949.

The Tax Court of the United States
Washington

Docket No. 16147

NORTHWESTERN MUTUAL FIRE ASSOCIA-
TION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Opinion, promulgated March 30, 1949, it is

Ordered and Decided: That there are deficiencies in income taxes for the years 1942 and 1943 in the respective amounts of \$5,089.03 and \$5,347.81.

[Seal] /s/ EUGENE BLACK,
Judge.

Endorsed Mar. 30, 1949.

Served Mar. 31, 1949.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The petitioner, the Northwestern Mutual Fire Association, by Jo D. Cook, its counsel, hereby files its petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States rendered on March 30, 1949, determining that the petitioner was not entitled to a refund of \$10,183.13 for the year 1942 and was not entitled to a refund of \$10,854.73 for the year 1943 and determining a deficiency of \$5,089.03 for the year 1942 and a deficiency of \$5,-347.81 for the year 1943.

In support of this its petition for review filed in pursuance of the provisions of Sections 1141 and 1142 of the Internal Revenue Code, the petitioner respectfully shows:

I.

Jurisdiction

The petitioner is a mutual fire insurance corporation organized and operating under the laws of the State of Washington. Its principal office is located at 217 Pine Street, Seattle, Washington. The petitioner filed its federal income tax returns for the years 1942 and 1943 with the Collector of Internal Revenue at Tacoma, Washington, whose office is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

II.

Prior Proceedings

This case was tried on the basis of stipulated facts before the Honorable Eugene Black, one of the Judges of the Tax Court of the United States on May 17, 1948, at Seattle, Washington. The Tax Court rendered its decision in favor of the respondent, and the decision was entered March 30, 1949.

III.

Nature of Controversy

This case involves an asserted deficiency in income tax for the years 1942 and 1943. The asserted deficiency is based upon a disputed claim for foreign tax credits under the provisions of Section 131(h) of the Internal Revenue Code.

For the year 1942 the petitioner claims a foreign tax credit in the total amount of \$15,272.16, whereas for said year the Commissioner of Internal Revenue asserts a deficiency in the amount of \$5,089.03.

For the year 1943 petitioner claims a foreign tax credit in the total amount of \$16,202.54, whereas the Commissioner of Internal Revenue for said year asserts a deficiency in the total amount of \$5,347.81.

IV.

Assignments of Error

That in its decision the Tax Court erred in the following particulars, to-wit:

A. In refusing to allow petitioner foreign tax

credits of \$15,272.16 for the year 1942 and \$16,202.54 for the year 1943;

B. In refusing to allow petitioner refunds of overpayments of income taxes in the amounts of \$10,183.13 for the year 1942, and \$10,854.72 for the year 1943;

C. In deciding that petitioner was liable for deficiencies in income taxes for the years 1942 and 1943 in the respective amounts of \$5,089.03 and \$5,347.81.

D. In deciding that petitioner was not entitled to the foreign tax credits claimed under Section 131 of the Internal Revenue Code.

E. In failing to decide that Section 131(b) of the Internal Revenue Code for the tax years referred to herein did not limit the amount of petitioner's foreign tax credit.

Wherefore, the petitioner petitions that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with the law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

/s/ JO D. COOK,

Counsel for Petitioner.

State of Washington,
County of King—ss.

Jo D. Cook, being duly sworn, says that he is counsel for the Northwestern Mutual Fire Association, the petitioner herein, and as such is duly authorized to verify the petition for review by the United States Court of Appeals for the Ninth Circuit of the decision in the above entitled case; that he has read the said petition and is familiar with the statements therein contained; and that the statements made are true to the best of his knowledge, information and belief.

/s/ JO D. COOK,

Subscribed and sworn to before me this 21st day of June, 1949.

[Seal] /s/ GERTRUDE M. POHLE,

Notary Public for State of Washington Residing at
Seattle, Washington.

My Commission expires November 4, 1952.

Filed June 24, 1949 T.C.U.S.

[Title of Tax Court and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To: The Commissioner of Internal Revenue, Respondent, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C., Attorney for Respondent.

You are hereby notified that the petitioner did,

on June 24th, 1949, file with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 21st day of June, 1949.

/s/ JO D. COOK,

Counsel for Petitioner.

Personal service of the foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 24th day of June, 1949.

/s/ CHARLES OLIPHANT,

C.A.R.

Filed June 24, 1949 T.C.U.S.

[Title of Tax Court and Cause.]

STIPULATION

It is Hereby Stipulated and Agreed by and between the parties to the above entitled action, through their respective counsel, that the record on appeal in this action shall include all of the pleadings, stipulations and documents of record in the above entitled Court.

/s/ JO D. COOK,

Counsel for Northwestern Mutual Fire Association,
Appellant.

/s/ CHARLES OLIPHANT,

C.A.R.

Counsel for Commissioner of
Internal Revenue, Appellee.

Filed Aug. 4, 1949 T.C.U.S.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 35 inclusive, constitute and are all of the original papers and proceedings on file in my office as the original and complete record in the proceeding before The Tax Court of the United States entitled "Northwestern Mutual Fire Association, Petitioner v. Commissioner of Internal

Revenue, Respondent, Docket No. 16147 and in which the petitioner in the Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 9th day of August, 1949.

[Seal] /s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: No. 12338. United States Circuit Court of Appeals For the Ninth Circuit. Northwestern Mutual Fire Association, a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed August 26, 1949.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 12338

NORTHWESTERN MUTUAL FIRE ASSOCIA-
TION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO REPLY

Comes now the Petitioner above named by and through its duly appointed counsel and advises the Court that the Petitioner intends to rely upon the Assignments of Error set forth in Paragraph IV of Petitioner's Petition for Review, which is made a part of the record herein.

/s/ JO D. COOK,

Counsel for Petitioner.

Filed Sept. 9, 1949 U.S.C.A.

[Title of Court of Appeals and Cause.]

PETITIONER'S DESIGNATION OF RECORD
TO BE PRINTED

Comes now the Petitioner above named by and through its duly designated counsel and designates

the following portion of the record in the above entitled case as the only portions of said record which are material to the consideration of the appeal:

I.

Referring to the transcript of the docket of the Tax Court, the Petitioner designates the following documents:

The Petition—Document No. 2.

Answer—Document No. 4.

Stipulation (less exhibits attached thereto)—Document No. 10 also No. 13.

Tax Court's Opinion—Document No. 30.

Tax Court's Decision—Document No. 31.

Petition for Review and Proof of Service—Document No. 32.

Stipulation re Contents of Record on Appeal—Document No. 35.

/s/ JO D. COOK,

Counsel for Petitioner.

Filed Sept. 9, 1949 U.S.C.A.

